

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

GREEN EDGE ENTERPRISES, LLC, )  
Plaintiff, )  
v. )  
RUBBER MULCH ETC., LLC, et al., )  
Defendants. )  
AND RELATED CLAIMS )  
No. 4:02CV566TIA

**MEMORANDUM AND ORDER**

This matter is before the Court on Defendant GroundScape's Motion for Summary Judgment and Defendants Rubber Mulch, Etc., LLC's and Rubber Resources, LLP's Motion for Reconsideration and Motion for Leave to Provide Supplemental Briefing. The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

On May 29, 2007, the undersigned issued an Order construing certain disputed terms in the ‘514 Patent at issue in this case. Subsequently, the parties contacted the Court and expressed the desire to supplement the pending motions in light of this Court’s ruling. During a telephone conference on June 5, 2007, the undersigned stated a preference for renewed motions containing all of the arguments in support of or in opposition to summary judgment, as opposed to several piecemeal documents.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant GroundScape Technologies, LLC's Motion for Summary Judgment [Doc. #130] is **DENIED** as **MOOT**. Defendant GroundScape shall file a renewed Motion for Summary Judgment no later than July 5, 2007. Defendant GroundScape may

refer to its Statement of Facts and other exhibits contained in the previous motion.

**IT IS FURTHER ORDERED** that Defendants Rubber Mulch, Etc., LLC's and Rubber Resources, LLP's Motion for Reconsideration [Doc. #181] is **DENIED** as **MOOT**. However, as stated in the teleconference, the undersigned will consider a renewed Motion for Summary Judgment submitted by Defendants no later than July 5, 2007. Defendants may refer to their Statement of Facts and other exhibits contained in previous motion. Upon deliberation of the renewed motion, the Court may consider vacating its previous denial of Defendants' Motion for Summary Judgment.

**IT IS FURTHER ORDERED** that Defendants Rubber Mulch, Etc., LLC's and Rubber Resources, LLP's Motion for Leave to Provide Supplemental Briefing [Doc. #213] is **DENIED** as **MOOT**. Defendants may argue the recent Supreme Court case in their renewed summary judgment motion.

**IT IS FURTHER ORDERED** that Plaintiff Green Edge shall file responses to the motions for summary judgment 30 days after the Defendants file said motions, and Defendants shall file replies 10 days thereafter.

**IT IS FINALLY ORDERED** that this case is reset for trial October 15, 2007, at 9 a.m. This is a one week trial.

**In this case, unless otherwise ordered by the Court, the attorneys shall, not less than twenty (20) days prior to the date set for trial:**

1. **Stipulation:** Meet and jointly prepare and file with the Clerk a JOINT Stipulation of all uncontested facts, which may be read into evidence subject to any objections of any party set forth in said stipulation (including a brief summary of the case which may be used on Voir Dire).
2. **Witnesses:**
  - (a) Deliver to opposing counsel, and to the Clerk, a list of all proposed witnesses, identifying those witnesses who will be called to testify and those who may be called.

(b) Except for good cause shown, no party will be permitted to call any witnesses not listed in compliance with this Order.

**3. Exhibits:**

(a) Mark for identification all exhibits to be offered in evidence at the trial (Plaintiffs to use Arabic numerals and defendants to use letters, e.g., Pltf-1, Deft.-A, or Pltf Jones-1, Deft Smith-A, if there is more than one plaintiff or defendant), and deliver to opposing counsel and to the Clerk a list of such exhibits, identifying those that will be introduced into evidence and those that may be introduced. The list shall clearly indicate for each business record whether the proponent seeks to authenticate the business record by affidavit or declaration pursuant to Fed.R.Evid. 902(11) or 902(12).

(b) Submit said exhibits or true copies thereof, and copies of all affidavits or declarations pursuant to Fed.R.Evid. 902(11) or 902(12), to opposing counsel for examination. Prior to trial, the parties shall stipulate which exhibits may be introduced without objection or preliminary identification, and shall file written objections to all other exhibits.

(c) Except for good cause shown, no party will be permitted to offer any exhibits not identified or not submitted by said party for examination by opposing counsel in compliance with this Order. Any objections not made in writing at least ten (10) days prior to trial may be considered waived.

**4. Depositions, Interrogatory Answers, and Request for Admissions:**

(a) Deliver to opposing counsel and to the Clerk a list of all interrogatory answers or parts thereof and depositions or parts thereof (identified by page and line numbers), and answers to requests for admissions proposed to be offered in evidence. At least ten (10) days before trial, opposing counsel shall state in writing any objections to such testimony and shall identify any additional portions of such depositions not listed by the offering party which opposing counsel proposes to offer.

(b) Except for good cause shown, no party will be permitted to offer any interrogatory answer, or deposition or part thereof, or answer to a request for admissions not listed in compliance with this Order. Any objections not made as above required may be considered waived.

**5. Instructions:** Submit to the Court and to opposing counsel their written request for instructions and forms of verdicts reserving the right to submit requests for additional or modified instructions at least ten (10) days before trial in light of opposing party's requests for instructions. (Each request must be supported by at least one pertinent citation.)

6. **Trial Brief:** Submit to the Court and opposing counsel a trial brief stating the legal and factual issues and authorities relied on and discussing any anticipated substantive or procedural problems.
7. **Motions In Limine:** File all motions in limine to exclude evidence, and submit a courtesy copy directly to the Court's chambers, at least ten (10) days before trial.

Failure to comply with any part of this order may result in the imposition of sanctions.

Dated this 6<sup>th</sup> day of June, 2007.

/s/ Terry I. Adelman  
UNITED STATES MAGISTRATE JUDGE